

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.) Case No. 20-CR-00050-JFH
)
JIMCY McGIRT,)
)
 Defendant.)

TRANSCRIPT OF PROCEEDINGS

AUGUST 25, 2021

BEFORE THE HONORABLE JOHN F. HEIL, III

UNITED STATES DISTRICT JUDGE

SENTENCING HEARING

APPEARANCES:

FOR THE PLAINTIFF:

MS. SARAH MCAMIS
MS. COURTNEY R. JORDAN
Office of United States Attorney
520 Denison Avenue
Muskogee, Oklahoma 74401

FOR THE DEFENDANT:

MR. T. RICHARD O'CARROLL
O'Carroll & O'Carroll
2171 North Vancouver
Tulsa, Oklahoma 74127

REPORTED BY:

JOANNA SMITH, CSR-RPR
United States Court Reporter

PROCEEDINGS

2 | AUGUST 25, 2021:

3 DEPUTY COURT CLERK: The Court calls Case
4 CR-20-50-JFH, United States of America versus Jimcy McGirt.
5 If counsel would please make your appearances for the
6 record.

7 MS. MCAMIS: Good afternoon. The United States
8 appears by Sarah McAmis and Courtney Jordan.

9 THE COURT: Good afternoon, counsel.

10 MR. O'CARROLL: Your Honor, Richard O'Carroll for
11 Mr. McGirt.

12 | THE COURT: Good afternoon, Mr. O'Carroll.

13 MR. O'CARRROLL: Good afternoon, Judge.

14 THE COURT: This matter comes on for sentencing.

15 Ms. McAmis, has the victim of this matter been
16 notified of this hearing and given an opportunity to attend,
17 if she desires?

18 MS. MCAMIS: Your Honor, the victim is here. She
19 is present as well as her mother, and I believe wish to make
20 a statement to you at an appropriate time.

21 | THE COURT: This would be an appropriate time.

22 They may come forward, one at a time or together, if they
23 would like, and they may come forward and make their
24 statements up here.

25 | You can come forward, ma'am.

1 MS. MCAMIS: I believe the victim may have just
2 stepped out in the hall.

3 THE COURT: Okay. We can wait just a moment.

4 MS. MCAMIS: Your Honor, just for the record, both
5 of them wish to make a statement. Do you want to wait until
6 the victim comes back in?

7 THE COURT: Do you want to wait?

8 MS. DeETTE KUSWANE: Yeah.

9 THE COURT: Okay. Yeah, we can wait just a
10 moment.

11 MS. MCAMIS: Thank you

12 MS. DeETTE KUSWANE: She's right there.

13 THE COURT: Okay. And, Ms. McAmis, they can
14 either use the podium at the back or they can come up
15 forward, if they would like.

16 MS. MCAMIS: Your Honor, may she remove her mask
17 while she speaks to you?

18 THE COURT: Yes. Yes, she may.

19 MS. BRIEANNA COKER: Hello. My name is BrieAnna
20 Coker, and it's taken a lot out of me to be here today. I
21 really don't even know where to start.

22 THE COURT: Take your time.

23 MS. BRIEANNA COKER: I mostly wanted to do this
24 for every one that he's hurt that doesn't have this chance
25 to stand up to him. This happened at such a young age, and

1 I had to suppress all of that at a really young age, and I
2 didn't quite understand the trauma I endured. And living
3 with that through my adult years, I didn't really understand
4 how that affected, you know, my self-worth, my confidence,
5 my relationships, until this came back to light. And the
6 moment I saw his face again and heard his name and knew I
7 had to relive this whole thing, it put me in a really dark
8 place.

9 My whole life, I've been off and on antidepressants
10 and things like that, anxiety. I didn't really know why
11 until just last year, I reached out and finally got help and
12 got counseling done and found out I had PTSD because of what
13 happened. And I have been still on a healing journey today,
14 and I think that's why I'm here today because, usually, I
15 would let my anxiety and stuff hold me back, and I would let
16 people walk all over me, and I wouldn't stand up for myself.
17 But I'm done doing that, and I want other people to be brave
18 enough to stand up for themselves too, because people like
19 Jimcy McGirt deserve to be put away forever because what he
20 did to me and my brain and my development is going to live
21 with me forever, for the rest of my life.

22 Like, an example -- you know, I still live a normal
23 life right now. You know, I work, I have my boyfriend and
24 stuff and friends. And the other day at work I was having a
25 great day, and I was actually just complimented about how I

1 was doing a really good job because I just started there
2 recently, and I was having a good day, singing, making
3 everyone laugh, and then I heard the news about the
4 sentencing, and it threw me into a huge panic attack to
5 where my boss had to take me outside to help me breathe.
6 And it just -- it changes me completely. The whole day just
7 -- it just really affects me. And really, the only people
8 that would understand how I feel are victims and people who
9 have gone through the same thing as me.

10 And I find it really selfish of him to sit there and
11 pretty much make me go through this again as an adult. And
12 it did affect me, you know, before it came back up, but not
13 as much as, you know, just last year. It just -- I just
14 don't think it's fair at all.

15 I'm sorry my mind is just going everywhere. I have so
16 much I want to say, but that's pretty much it. I'm here for
17 the people that can't speak up for themselves against him.
18 So that's -- that's pretty much it.

19 THE COURT: Ms. Coker, thank you for your
20 statement.

21 MS. DEETTE KUSWANE: My name is DeEtte Kuswane.
22 I'm the mother of that hero that just stood up here and
23 spoke to you.

24 You know, a mother never wants anything to happen to
25 their child, especially somebody they trusted. I wish I had

1 half the strength she had, but she shouldn't have to have
2 that kind of strength at five years old, having to testify,
3 and watching your child have to testify and say the things
4 that she had to say. I don't live with the same thing that
5 she lives with because it happened to her, but I live with
6 the guilt that I wasn't able to keep from happening to her.

7 And the fact that he comes out like he's a hero. He's
8 McGirt. All you hear is McGirt, McGirt, McGirt. He wants
9 to be free. She's never going to be free. She has -- he
10 served his time. She has to serve it for the rest of her
11 life. I don't even want to hear his name. Nobody wants to
12 hear his name. He doesn't deserve to have his name even
13 spoken. It should be something like sovereignty or
14 whatever. He's not a hero. What he did, she's not the only
15 victim. Why did my the daughter have to relive this? For
16 what? We're Native American too. Over land?

17 He's destroyed other families, not just ours. There's
18 so many people going through so much now because of him. He
19 has caused so much turmoil, not just for my child and my
20 family, and he knows what he did. He knows and his kids
21 know what he's done. It has just not affected us. He's
22 affected this whole state now.

23 My daughter is my biggest hero, and I didn't want her
24 to have to be another hero all over again. I still remember
25 that time when she testified. They told her she was a

1 guardian angel for all the other little kids. She protected
2 every other little kid from him.

3 And I'll be honest, when this all came up, there was a
4 point she didn't want to come. She didn't want to fight.
5 She didn't want to fight. why? Because she didn't want to
6 face -- she didn't want to relive it, but she was having to
7 relive it because every day it was on the news. She lives
8 here. I live in New York. I flew down and drove from Texas
9 just to make sure that I was here today with her and beside
10 her.

11 This shouldn't be happening. People like him
12 shouldn't even get a second chance, because she doesn't.
13 She has to live with this for the rest of her life. And
14 there is a victim that's dead, and he knows exactly who that
15 is. They can't be here to speak her voice. And I won't say
16 no names out of respect because her mother is in the
17 courtroom, but he knows what he's done in his own family.
18 And if this man walks free, he's going to do it again.

19 Like her, I have so much to say, but my child
20 shouldn't have to go through this, no child and none of the
21 other families having to relive this just because he found a
22 loophole.

23 Thank you. That's all.

24 THE COURT: Ms. Kuswane, thank you for your
25 statement.

1 MR. O'CARROLL: Your Honor, for the record, we
2 object to the turmoil -- pardon me. We object to the
3 turmoil, affected the whole state, and reference to a
4 deceased person who's supposedly a victim. Ask it be
5 stricken.

6 THE COURT: Your objection is noted for the
7 record. The Court notes that a draft presentence
8 investigation report was filed on February 25th, 2021, with
9 a revised final presentence investigation report filed on
10 June the 10th, 2021, and then a second revised final
11 presentence investigation report was filed on July 26, 2021.

12 Mr. O'Carroll, did you have an opportunity to review
13 and discuss the second revised final presentence
14 investigation report, as well as the previous reports with
15 your client as well as with the probation office?

16 MR. O'CARROLL: Yes, Your Honor, as to my client,
17 and, yes, as to the probation office.

18 THE COURT: All right. Ms. McAmis, did you have
19 an opportunity to review those reports and discuss them with
20 the probation office to the extent you wish to do so?

21 MS. MCAMIS: Yes, Your Honor.

22 THE COURT: The Court has reviewed the defendant's
23 objection to the presentence report filed at Docket Number
24 167 as well as the objections to the presentence report
25 filed today at Docket Number 179. The Court has also

1 reviewed the government's response filed at Docket 168.

2 Mr. O'Carroll, would you like to be heard further
3 regarding defendant's objections to the presentence report?

4 MR. O'CARROLL: Yes, Your Honor.

5 THE COURT: You may proceed, sir.

6 MR. O'CARROLL: Thank you. May I?

7 THE COURT: Yes, you may.

8 MR. O'CARROLL: Thank you, Judge. Your Honor, the
9 presentence report, in terms of the victim, I suggest was
10 overbroad, and there was a lack of sufficient cause to
11 justify the conclusions in the various paragraphs that were
12 listed in Mr. McGirt's objection.

13 Everybody has difficulties in their life, and what we
14 didn't have in terms of this hearing today where the issue,
15 the ultimate issue, is whether the government's application
16 for a variance will be granted, upward variance, is we
17 didn't have documentation, which I suggest is very important
18 in terms of impact of PTSD, etcetera, and some of the
19 assertions were directly contradicted. The one that was --
20 I think that was the most notable was Ms. Norma Blackburn,
21 her testimony in 1996 in state court, where she said that
22 Ms. Coker, at that time obviously a very young child, was
23 having nightmares on a regular basis. Not just nightmares,
24 fits, wake up wet, etcetera. So there was turmoil going on,
25 and it was a year before these accusations. So I think that

1 that's important.

2 Additionally, Judge, understanding that I'm
3 representing a man who's being sentenced today and trying --
4 trying to say it as softly as possible, there was a lot
5 of -- there was a lot of turmoil in the family as well that
6 was in the record. Beyond just asking questions, which the
7 probation officer did, of Ms. Coker and her mother, there
8 was testing in the record, and there was a lot of -- and I
9 use the word dysfunction respectfully, because I think
10 everybody deals with dysfunction at some level -- in the
11 interactions and the interpersonal reactions with other
12 family members.

13 So there are other opportunities for the difficulties.
14 This is based on hearsay upon hearsay. I mean, their
15 quoting of the -- of the aunt who has since deceased, and
16 there's been no testing of it, and it's quite redundant as
17 well, Judge. I mean, it's not just like a little bit here
18 and a little bit there. It's paragraph after paragraph
19 after paragraph. And I think that is the engine that is
20 driving the government's motion, and I think that we should
21 look at it, as we should look at all things, with a critical
22 eye to whether or not it's actually causation in this
23 particular case.

24 Judge, I made a previous record on the position of
25 trust and responsibility. I don't feel the need to argue

1 that -- that matter, Judge.

2 THE COURT: All right. Very well. Thank you,
3 Mr. O'Carroll.

4 MR. O'CARROLL: Thank you.

5 THE COURT: Ms. McAmis, would you like to be heard
6 in response?

7 You may proceed.

8 MS. MCAMIS: Your Honor, your specific inquiry at
9 this time was with respect to objections to the PSR, and as
10 Your Honor correctly noted, the defense filed two different
11 objections. The first being the objection to the two-level
12 enhancement for care, custody, and supervisory control. And
13 as the government pointed out in it's response, the case
14 that the defense cited in favor of its objection is very
15 distinguishable from the case at bar.

16 The defense cited the *Blackbird* case for the
17 proposition that because in that case the victim was 15
18 years old, and the suspect was not -- or the defendant was
19 not living in the same home with her, the court had found
20 that the two-level enhancement was not applicable.

21 However, as Your Honor will recall from the testimony
22 that was elicited in front of this jury, the victim at the
23 time of these offenses against her was four years old, and
24 she was, in fact, staying in the care, custody, and
25 supervisory control of the defendant while her mother was on

1 vacation and while the grandmother was at work and away from
2 the home. Therefore, as we noted in our objection to the --
3 or our response to the defendant's objection, the two-level
4 enhancement is applicable.

5 Your Honor, as to the objections to the PSR that the
6 defendant filed on today's date, well after not only the
7 first deadline, but the extended deadline that the Court had
8 previously given, I think it's unfortunate that the response
9 is to try in a publicly filed pleading to sully the victim's
10 family.

11 Of course, Your Honor heard the testimony during the
12 case and knows that some of counsel's assertions about the
13 nature and characteristics of the family are highly
14 contested and were directly disputed during the trial. But
15 be that as it may, if the defendant's objection is based
16 upon a dysfunctional home, that in no way, shape, or form --
17 you can come from the best home in the world, you can come
18 from the most dysfunctional home in the world, but when you
19 are sexually abused, your vagina is penetrated at four years
20 old by your step grandfather, that has an everlasting and
21 lifetime effect on you despite the nature of your immediate
22 family. And those are the objections that the government is
23 responding to at this time.

24 THE COURT: Thank you, Ms. McAmis.

25 First, as to the custody, care, and supervisory

1 control matter, the defendant has filed an objection to the
2 guideline calculation contained within the presentence
3 report regarding the two-level enhancement applied pursuant
4 to U.S. Sentencing Guidelines, Section 2A3.1(b)(3)(A). In
5 accordance with that provision, the offense level is
6 increased by two levels if the minor victim was in the
7 custody, care, or supervisory control of the defendant. The
8 defendant contends that the minor victim in this case was
9 not left in his care, nor did he have any degree of
10 authority or responsibility for the minor.

11 As identified in the presentence report and addendum
12 and as the evidence at the trial in this case established,
13 the minor victim in this matter was four years old or
14 shortly before four years old, as she was turning four years
15 old the week that these incidents happened. And for
16 approximately one week, near the child's fourth birthday,
17 her mother traveled out of the country for vacation and left
18 the child in the care of her grandmother, Norma McGirt,
19 Norma Blackburn, who was at that time married to and living
20 with the defendant. It was during the time frame in which
21 the minor victim was in the care of the defendant and his
22 wife that the offense conduct in this matter took place.
23 Norma McGirt worked most days during that time frame, and
24 the defendant and the minor victim would take her to and
25 from work. Ms. McGirt -- while Ms. McGirt was at work, the

1 minor victim was entrusted to the care of the defendant.
2 The offense conduct in this matter took place in the
3 defendant's home and in his vehicle, and most of which
4 occurred while Ms. McGirt was at work and the minor victim
5 was in the care of the defendant.

6 The evidence further adduced was that the minor victim
7 loved the defendant, always wanted to be with him, and loved
8 him like a grandfather, at least prior to the offensive
9 conduct. There was also testimony previously that the
10 defendant [sic] had at times referred to the defendant as
11 grandpa.

12 The application notes of the U.S. Sentencing
13 Guidelines, Section 2A3.1, provide that the enhancement
14 under Subsection (b)(3)(A) is to be construed broadly and
15 includes offenses involving a minor victim entrusted to a
16 defendant, whether temporarily or permanently, and further
17 specifies that teachers, day care providers, babysitters, or
18 other temporary caretakers would be subject to such an
19 enhancement.

20 This case is easily distinguishable from the case of
21 the *United States v. Blackbird* at 949 F.3d 530, Tenth
22 Circuit, 2020. Due to her young age, the minor victim in
23 this matter required adult care and supervision. During the
24 time of the offense conduct, the minor victim was
25 temporarily entrusted to the care, custody, and supervisory

1 control of the defendant. During the time the minor victim
2 was staying with her grandmother and the defendant, the
3 defendant was responsible for the minor victim's care during
4 the day while Norma McGirt was at work. Based upon a
5 totality of the circumstances in this case, the Court finds
6 by a preponderance of the evidence that the two-level
7 adjustment under U.S. Sentencing Guideline, Section
8 2A3.1(b)(3)(A) is appropriate, and the guideline
9 calculations as to each count of conviction identified in
10 presentence report are accurate. Accordingly, the
11 defendant's objection in this regard is overruled.

12 With respect to the objections filed today concerning
13 various sections in the presentence report, which go to the
14 nature of the impact that the offensive conduct had on the
15 victim, the Court notes that those seem to be consistent
16 with the testimony at trial. The Court finds that the
17 explanation given and the firsthand observation of the
18 victim in this case by her mother and as how the sexual
19 abuse committed by the defendant against her impacted her
20 are appropriate. The Court is mindful, though, that the
21 sentence in this case will not be based predominantly on
22 that impact regardless of how a child would respond to such
23 a sexual abuse, whether it be an impact that could affect
24 her for her whole life, or for 24 years, 28 years, or if the
25 child was able to easily move on, wouldn't explain or

1 justify the conduct. So while the Court is overruling those
2 objections, the Court notes that that doesn't have very
3 significant impact. While the Court understands and hears
4 the victim in this case and understands that she has been
5 substantially impacted, that factor alone does not play a
6 great part in what the Court's ultimate sentence will be.

7 Having addressed and overruled these objections, the
8 Court adopts the presentence report, and it will form the
9 factual basis for the Court's sentence today.

10 In calculating the defendant's sentence, the Court
11 must make an accurate determination of the applicable
12 sentencing range under the United States Sentencing
13 Guidelines.

14 The Court notes for the record that the 1995 edition
15 of the guidelines manual was in effect at the time of the
16 most recent conduct involved in the instant offense.
17 Therefore, the 1995 edition of the guidelines manual was
18 utilized to compute the guidelines in this case.

19 In this case, based upon the offense to which the
20 defendant was found -- offenses to which the defendant was
21 found guilty, the specific offense characteristics and an
22 adjustment for acceptance of responsibility, defendant's
23 total offense level is 36. His criminal history category is
24 II.

25 Under the applicable guideline provisions, the

1 sentencing range for imprisonment is 210 to 262 months, the
2 sentencing range for supervised release is three to five
3 years, and the defendant is not eligible for probation.
4 Under the applicable guideline provisions, the Court may
5 also impose a fine from \$20,000 to \$200,000. Restitution is
6 mandatory, but has not been ascertainable in this case.

7 After calculating the guidelines, I must consider the
8 relevant factors set out by Congress at Title 18, U.S.C.,
9 Section 3553(a), and ensure that I impose a sentence that is
10 sufficient, but not greater than necessary, to comply with
11 the purposes of sentencing. These purposes include the need
12 for the sentence to reflect the seriousness of the crimes,
13 to promote respect for the law, and to provide just
14 punishment for the offense. The sentence should deter
15 criminal conduct, protect the public from future crime by
16 the defendant, and promote rehabilitation. In addition to
17 the guidelines and policy statements, I must consider the
18 nature and circumstances of the offense, the history and
19 characteristics of the defendant, the need to avoid
20 unwarranted sentence disparities among similarly situated
21 defendants, and the types of sentences available.

22 The government has filed a motion for upward
23 departure, or, in the alternative, an upward variance from
24 the guideline range at Docket Number 169. The Court has
25 reviewed the government's motion.

1 Ms. McAmis, does the government wish to be heard
2 further concerning that motion?

3 MS. MCAMIS: Yes, Your Honor.

4 THE COURT: You may proceed.

5 MS. MCAMIS: Thank you, Your Honor. Today is a
6 very important sentencing hearing. It is not important as
7 the defendant alleges because this case was the vehicle for
8 a change in Oklahoma's jurisdictional law. That fact I
9 would state is not relevant to the Court's decision today
10 and should not be considered by the Court when assessing
11 punishment. Instead, this case is about the actions of the
12 man behind the headlines, the lives of his victims and their
13 families that he has permanently affected, and what
14 punishment would best protect the public and bring justice
15 to the victim in this case and in his previous case.

16 The case that was presented to the jury in this
17 courtroom was the case about the man, Defendant McGirt, who
18 in 1996 used his role as a step grandfather to gain access
19 to and then sexually abuse a four-year-old little girl by
20 putting his fingers in a four-year-old's vagina, his tongue
21 in a four-year-old's vagina, and using a four-year-old's
22 little hands to touch his penis, all for his own sexual
23 pleasure.

24 But the story of this defendant, Mr. McGirt, and the
25 destruction caused by his continued sexual abuse of children

1 started long before 1996. In 1989, this defendant pled
2 guilty to orally sodomizing two different boys on different
3 and separate occasions. One of those little boys was only
4 five years old at the time, and the other was only eight
5 years old at the time. And the explanation that the
6 defendant gave at the time for sexually abusing these two
7 little boys is chilling. It is the government's position
8 that the defendant's statement is extremely important even
9 today for this Court, when this Court is considering not
10 only the nature and characteristics of this particular
11 defendant, but also the defendant's risks of reoffending and
12 what is needed for the protection of the public.

13 In that case, in 1989, when confronted about what he
14 had done to these two little boys, the defendant denied and
15 denied and denied until he finally admitted and in response
16 claimed that he was not a habitual child molester, in his
17 words, and he said that the abuse of the boys would be his
18 first and his last, and that turned out to be far from the
19 truth. The defendant's explanation of why he had to
20 sexually abuse a five-year-old little boy and an
21 eight-year-old little boy was because, in his words, his
22 girlfriend had just delivered a baby, and she was upset at
23 him for spending too much time with his ex-wife. The
24 defendant said frustration over that particular situation
25 caused him to be driven to a perverted sexual desire, his

1 words. The defendant said that his girlfriend was -- again,
2 all in his words -- uncomfortable during vaginal
3 intercourse, so she would only stimulate him orally. The
4 defendant, again, in his words, claimed that his penis was
5 so large that his girlfriend's mouth got tired, and,
6 therefore, he was not able to ejaculate. In the defendant's
7 word, he was so sexually frustrated by this that his sexual
8 frustration reached its peak in December during the exact
9 same time that these innocent children were present in the
10 apartment complex where the defendant was working. It is
11 for those reasons that the defendant claimed he had to
12 sexually satisfy himself by orally sodomizing these two
13 little boys.

14 The defendant went to prison for that conduct, and he
15 was discharged in March of 1991. And it is important to
16 note that within ten months, less than one year later, he
17 married his new wife, the victim's grandmother in this case,
18 and immediately had access to not only the four-year-old
19 victim in this case, but the other grandchildren involved.
20 This is a man who the Court should be able to recognize does
21 not seem to care whether his child victim is a boy or a
22 girl, apparently, as long as the victim is between four
23 years old and eight years old and can satisfy his own sexual
24 desires, he is happy.

25 As in the first case, when the defendant denied,

1 denied, denied, and then admitted what he had done, but
2 tried to blame it on, apparently, the actions of his
3 girlfriend and the size of his penis, in this case the
4 defendant denied, denied, denied what he had ever done, and
5 then finally wrote a letter apologizing for the sexual
6 abuse, but claiming that he was not in his right mind, and
7 that the devil made him do it.

8 So as Your Honor decides what sentence to impose
9 today, and in conjunction with the government's motion for
10 upward departure first and foremost, of course, Your Honor
11 knows that you can consider without limitation, any
12 information concerning the background, character, and
13 conduct of the defendant. And part of an upward departure
14 motion is to consider whether this defendant's conduct is
15 within the heartland of this type of conduct, and whether or
16 not previous leniency upon him was ineffective.

17 This defendant has demonstrated that the leniency that
18 was shown on him at the time of his first conviction, he
19 only served a short amount of time for sexually abusing two
20 different children. That was obviously an ill-effective
21 deterrent. He could have taken that opportunity to
22 rehabilitate himself, stay away from children, and never
23 destroy another young life, but, instead, within a year, he
24 had done exactly what the probation officer in that first
25 case was afraid of. And for that reason, the government

1 asserts that the Court can and should provide an upward
2 departure in this case.

3 In the alternative, as the government set forth in its
4 motion, the government requests an upward variance pursuant
5 to the sentencing factors in 18, U.S.C., Section 3553. As
6 Your Honor is aware, those sentencing factors are divided
7 into subcategories, and the nature and the circumstances of
8 the defendant's crime, as in Subsection (a)(1), the
9 government would assert that his criminal conduct in this
10 case is extremely serious and demands an appropriately
11 serious sentence.

12 As I thought of how I would communicate to the Court
13 today the consequences, the lifetime consequences of sexual
14 abuse, I didn't know what the victim and her mother were
15 going to be able to stand up in front of you today and say,
16 and I would submit to the Court that there is no way I could
17 express it any better. To be able to stand up and tell the
18 Court how this man has impacted their lives, not only in
19 front of this man, but in front of this entire courtroom of
20 strangers, both of them were extremely brave, and I commend
21 both of them for being able to do that. There is no
22 question but that when this defendant chose three little
23 children to sexually abuse, he not only impacted their
24 lives, he impacted the lives of their families as well.
25 They are still living with it, and he should have to

1 continue to live with the consequences of his actions.

2 Under the -- also, under this category, Your Honor, it
3 is important that in the defendant's first conviction,
4 during those proceedings with the probation officer, the
5 probation officer noted that the defendant did not see
6 himself as a threat to the community. It was noted that he
7 did not appear to feel any remorse toward his victims, and
8 that he did not express any concern about any present or
9 future impact on those boys. In that case, the probation
10 officer found that the defendant had used his position of
11 employment and the vulnerability of young children to
12 perpetrate on the victim, and the probation officer informed
13 the court that the defendant, in fact, posed a threat to the
14 community. This defendant proved everything about what that
15 probation officer predicted. As soon as he got out of
16 prison, he gained the trust of yet another young child and
17 immediately sought her out and immediately continued to
18 sexually abuse her without any remorse or concern. And to
19 this day, the lack of remorse and the apparent lack of
20 concern that he shows for his victim is stunning.

21 Although I know that the Court has stricken the
22 pleadings that this defendant continues to file in his own
23 handwriting, one only has to review one paragraph to
24 understand that he has no remorse whatsoever about his
25 actions.

1 Your Honor, the victim in this case told you about how
2 this has impacted her entire life, and she talked about the
3 fact that having this brought back up again has dramatically
4 impacted her as well. And I would submit to the Court that
5 that is something that the Court can and should consider.
6 That having to relive everything that she has had to relive,
7 and having the defendant, even though he accepted
8 responsibility somewhat after his conviction in this case
9 and blamed it on the devil and blamed it on his mind, he
10 then chose to have -- take the opportunity to put her
11 through this entire process again.

12 It is important that Your Honor impose a significant
13 sentence for this defendant to -- under the need to afford
14 adequate deterrence to criminal conduct, this Court can and
15 should send a message to current and future abusers and
16 demonstrate to the public that sexual victimization of
17 children will be seriously addressed and will be deterred
18 when it is discovered, no matter how long it is into the
19 process.

20 And, finally, Your Honor, when -- under the category
21 -- in addition to what the government has set forth in its
22 motion, under the category of the need to avoid sentencing
23 disparities, Your Honor is correct that this Court should
24 consider and calculate the sentencing guidelines under the
25 1995 guidelines. It is worth noting that the 1996

1 guidelines were imposed within a month after he committed
2 these crimes, but the 1995 guidelines were in effect at the
3 time. And the government would submit to the Court that in
4 the 25 years since then, our society has reached a far
5 greater awareness of the lifelong impacts of child sexual
6 abuse. If calculated under today's guidelines, the
7 defendant, first of all, would be facing a lifetime of
8 imprisonment because of his past conviction, but his base
9 offense level, even if you weren't considering that, would
10 be 11 levels higher. Under the current guidelines, we
11 recognize that serious bodily injury is deemed to have
12 occurred under the crime of criminal sexual abuse, and in
13 addition the defendant would be eligible for an additional
14 five-level enhancement because of the pattern of activity
15 that he engaged in involving prohibited sexual conduct.

16 Your Honor, for all of these reasons -- Your Honor sat
17 through this trial, you heard all of the evidence, you heard
18 all of the evidence that the jurors in this case were not
19 able to hear, you know the background and history of this
20 case, and you know the impact of this case on the victim.
21 For all of the reasons that the government has articulated,
22 we ask the Court to depart and/or vary from the guidelines
23 and to sentence this defendant to a lifetime of
24 incarceration and not let him out into our community again.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Ms. McAmis.

2 Mr. O'Carroll, the defendant filed a response in
3 opposition to the government's motion at Docket Number 173.
4 Do you wish to be heard further concerning that response?

5 MR. O'CARROLL: I do, Your Honor.

6 THE COURT: And you may address the issue of
7 departure as well as the 3553(a) factors.

8 MR. O'CARROLL: Thank you, Your Honor.

9 Your Honor, for the record, Mr. McGirt objects to the
10 notion by the government that he should be -- there should
11 be some kind of additional variation from the guidelines
12 because, quote, the victim had to relive this and was put
13 through the process. The guidelines --

14 THE COURT: Mr. O'Carroll, I don't want -- I don't
15 want to interrupt you, but I -- and I don't want you to be
16 cut short on time, but I want you to know that the fact that
17 this is a high publicity case, the fact that we had a
18 retrial because the Supreme Court determined that the State
19 didn't have jurisdiction, and the fact that Mr. McGirt took
20 advantage of his constitutional right to a jury trial, I can
21 assure you that those factors do not play any part in my
22 determination of what a sentence should be in this case. I
23 didn't mean to interrupt you, but I wanted to let you know
24 that that is the case. You may proceed.

25 MR. O'CARROLL: Judge, and I believe that. I felt

1 that I just needed to -- and I'll do it quicker, we object
2 to some of the notions by the government, specifically
3 relive, that's already factored in, and the not so subtle
4 request of ex post facto application.

5 Judge, now, if I can get on with the argument. It's
6 been said that emotion is the enemy of reason, and the
7 government has a compelling argument. It took me about four
8 hours to read this entire file, maybe less, maybe three, and
9 identified the biggest problem in this case. It's always
10 been that way. And this is the kind of case that in state
11 court, a public defender would refer to it as a ZIP code
12 case because there's five digits in the ZIP code. And
13 that's exactly what the jury did. It was about the previous
14 convictions. And what -- the dynamic that occurs is he
15 doesn't testify, some jurors say the case isn't proven
16 beyond a reasonable doubt. Second page is introduced, those
17 jurors who were holding out for acquittal now become leading
18 the charge to string the defendant up. This is a well
19 recognized dynamic, Judge, and that's what happened in this
20 particular case. So that's always been the issue, the
21 Oklahoma City events. And the government did a good job of
22 laying that out, but then it went on to say that previous
23 leniency has been ineffective, and that's the argument, and
24 that's the nub of the matter.

25 And, Judge, you have to look at this in being in a

1 unique situation. Rarely have I ever been in a situation
2 where my client has served the sentence and then went --
3 before the sentence has been imposed. I mean, that rarely
4 happens. And it's not 1996, and you're not speculating
5 about his behavior. Twenty-four years later, you have a
6 record of his behavior. And it was argued at the bail
7 hearing that he had two write-ups in 24 years. That's what
8 we're talking about now. The dynamic has changed. So to
9 say that previous leniency has been ineffective, maybe in
10 1996 it was ineffective, but 25 years later, 24 years later,
11 it's not been ineffective. And Mr. McGirt isn't asking for
12 leniency, as the Court well knows, he's asking to stay in
13 the heartland of the guidelines. And the government wants
14 to depart. And the government not so subtly argues the
15 notion of upending jurisprudence and sending a message,
16 which, if said to a jury, is considered error.

17 So looking at the factors, all of the factors, Judge,
18 there's not a criminal history here to justify this. If you
19 look at it, there's no information on a desertion, and
20 Mr. McGirt discharged the Marines with an honorable
21 discharge. There's no information on a DUI whatsoever.
22 There's no information on an unauthorized use of a motor
23 vehicle, but Mr. McGirt was 16 at the time, and my memory --
24 and this is merely my memory, Judge, and I thought of this
25 just today -- is that this was a time -- there was a time in

1 the state of Oklahoma where boys were considered -- I mean,
2 women could buy beer at 18 and men could not buy beer at 18.
3 And finally the Supreme Court overruled that unequal
4 protection of the law. But that unauthorized use was
5 expunged, vacated. And I hear concepts, like,
6 technicalities. They're not and the Court knows that. So
7 in terms of the criminal history here, there is nothing
8 there to -- in terms of these charges, no underlying facts,
9 nothing to inform the Court whether he was really a juvenile
10 offense, whether the law was equally applied to him at the
11 time, and whether he even had a lawyer.

12 THE COURT: Mr. O'Carroll, before you get too far
13 into that, with regard to the unauthorized use of a motor
14 vehicle, I note there it's noted that he had a conviction.
15 It's noted that it occurred in 1965, his age was 16 years
16 old. That's in the record. I can tell you I give
17 absolutely no weight whatsoever to that incident when he was
18 16 years old, when I think about what his sentence will be,
19 absolutely no weight whatsoever.

20 MR. O'CARRROLL: Is that the case for all of them
21 or just that particular one, Judge?

22 THE COURT: Well, it's certainly for that, and
23 then there's others were there were no points given, not
24 enough information on the assault with a deadly weapon. He
25 was 21. I don't have enough facts on that. He was given no

1 points on it. That bears no weight in terms of what my
2 determination of the sentence would be. The matter is not
3 the same obviously for the prior forcible oral sodomies, of
4 course. He's got points for those, and that certainly is
5 very much weighing in my determination, as you might
6 imagine. I'm sorry for interrupting you, but I wanted to at
7 least tell you where I was on that before you got too far
8 down the road.

9 MR. O'CARROLL: Thank you, and I appreciate you
10 doing that, Judge.

11 So moving on to the 3553 factors and understanding
12 what we're dealing with, one of the factors, nature and
13 circumstances of the offense -- and I'm going to get in the
14 weeds on this, and it's going to be difficult, but I need to
15 do it. This isn't some kind of extreme harm. It was slight
16 touching. Yes, it was touching. Yes, I understand the
17 nature of the accusation. But under the guidelines and when
18 you're -- when you're doing a departure, there has to be
19 something significant to warrant that. So as -- and it's
20 already baked in, in the guidelines that this is an under 12
21 crime, and it's already baked in, in the guidelines that
22 this is an under 12 crime with a previous conviction.

23 Factor No. 2 under 3553, history and characteristics
24 of the defendant. I anticipate the defendant will tell you
25 in allocution that he was abused, and I think that that's

1 not unusual. I think that's quite usual as a matter of
2 fact, and I don't think there's any data out there to say
3 that it isn't a consideration. And, yes, the government did
4 a good job about Mr. McGirt in Oklahoma City, giving
5 ridiculous notions about why he was doing this. And if I
6 don't say anything else, Judge, I think the word that I need
7 to speak right now is the word "insight." There's a
8 difference after 24 years in his mindset today than there
9 was in 1996, and most definitely was in 1988. And it takes
10 that kind of insight to make this all understandable to
11 anybody and especially a person who's walking around that
12 doesn't understand it. And he will explain that to you.

13 So the characteristics of the defendant today are not
14 what they were in 1996. The characteristics of the
15 defendant today are based on the fact that he had to
16 struggle in prison to avoid abuse, and he wasn't successful.
17 And he was beaten to the extent that he was beaten, and his
18 probation officer was made aware of that. I was sitting in
19 the room when he told her about it. And the anxiety that
20 comes from that is terrifying. The free-floating anxiety of
21 never knowing. You get hit -- you get hit with a rock in
22 the head and you're knocked unconscious. You wonder is it
23 going to happen again. So your head's on a swivel forever.
24 Similarly, you get a broken collarbone because you've been
25 beaten. You wonder is it going to happen again. He got

1 older. Did things kind of settle down? Yes. But that's
2 what we're talking about, his characteristics today, not in
3 1996.

4 Again, the need to reflect on the seriousness of the
5 offense, promote respect for the law, and provide a just
6 punishment. Do not the guidelines do that? I think they
7 do. So we're dealing with just a need to depart. We're not
8 asking for leniency. We're suggesting that Mr. McGirt,
9 today, is a different person than he was in 1996 and most
10 definitely 1988.

11 And will it afford adequate deterrence. Let me talk
12 about that for a minute. Counsel makes -- puts great weight
13 on the fact that the guidelines and the base offense rates
14 changed within a month of these events. Okay. They did.
15 But one of the criteria is uniformity. You don't achieve
16 uniformity, I would suggest, by departing from the
17 guidelines. You achieve uniformity by -- and making ex post
18 facto application of a new law. You achieve uniformity by
19 not departing from the guidelines, and everybody is within
20 the same parameters. And, Judge, I know that you know that.
21 I just felt obliged to say it.

22 The need to protect the public from further crimes
23 from the defendant, Number 5. Again, Judge, it was -- at
24 the bail hearing, Mr. McGirt's family and his kin, even
25 there was a retired Lighthorse officer, we were trying to

1 get him out with a monitor, have him live in trailer in
2 Holdenville. Probation didn't talk to the family. We gave
3 them all the information, and that was a little troubling in
4 the sense that maybe they had new information that I didn't.
5 But he is 73 years old. He's whipped. You can look at him.
6 He's still a little bit feisty, and he'll file
7 jurisdictional motions and fire his lawyer, Judge, but he's
8 whipped. And insight becomes very, very important,
9 especially when he can translate what happened to him into
10 why he's doing really abhorrent stuff. So that's what we're
11 dealing with here.

12 And we talked about unwarranted sentencing
13 disparities. The Court should look at that in terms of
14 departure upward versus not departure upward, that
15 consistency, as opposed to ex post facto.

16 And then the final factor is restitution, which the
17 Court has already said is not really much of a factor when
18 somebody has been in prison for 24 years.

19 Judge, those are the reasons -- and I started this by
20 saying emotion is the enemy of reason, and it is. Good
21 lawyers definitely hit the right buttons, they provoke
22 emotions. This room is full of emotions. It should be.
23 It's natural. But what we're really talking about here is
24 whether or not we need to deviate from the guidelines. And
25 I do believe you, sir, when you say that this isn't about

1 politics. You're an Article III judge. But that's still in
2 the air. It's not only in the air, it's now in this record,
3 and that is a factor.

4 So the government is asking for too much. And if the
5 totality of the circumstances, with all of these 3553, they
6 only get to one place, the previous leniency was
7 ineffective; therefore, there needs to be -- I forget the
8 phrase that the guidelines use -- additional punishment is
9 -- and that is not an accurate factual statement today,
10 because we are in an unusual position where Mr. McGirt has
11 served the sentence. Society will be protected with a
12 monitor. Society will be protected with Mr. McGirt living
13 five miles from pavement. Society will be protected by his
14 family being around him. And what we're talking about here
15 is anger and -- that's sufficient.

16 So we would suggest, respectfully, that the government
17 hasn't proven the need for a departure, and we ask that the
18 motion be denied, Your Honor.

19 THE COURT: Thank you, Mr. O'Carroll.

20 The government has filed a motion for an upward
21 departure or variance from the advisory guideline
22 calculations identified in the presentence report in this
23 case, asserting that the identified range does not reflect
24 the nature and circumstances of the offense or the
25 defendant's pattern of criminal conduct, and suggesting that

1 a sentence of life imprisonment is appropriate in this.

2 Counsel for the government identifies prior acts of
3 sexual abuse by the defendant against multiple minor
4 victims. Counsel further identifies the entirety of the
5 defendant's prior criminal history and provides that his
6 criminal history category substantially underrepresents the
7 defendant's criminal history and likeliness of recidivism,
8 as some of his prior convictions were not assessed criminal
9 history points due to the age of the prior convictions. The
10 government further asserts that the current statutory and
11 guideline provisions for the defendant's offense and
12 conviction result in a life sentence, and anything less than
13 that would be -- would result in sentence disparity.

14 The Court recognizes its authority to depart or vary
15 from the advisory guidelines. The Court finds the advisory
16 guideline imprisonment range identified in this case is
17 appropriately determined based upon the United States
18 Sentencing Guidelines in effect at the time of the offense
19 conduct in this matter, and that a departure under the
20 guideline policy statements is not warranted.

21 That having been said, the Court looks at the case of
22 *Gall v. United States* and makes some observations. Therein,
23 the Supreme Court has noted that a district court should
24 begin all sentencing proceedings by correctly calculating
25 the applicable guideline range. The Court has done that in

1 this case. As a matter of administration and to secure
2 nationwide consistency, the guidelines should be the
3 starting point and the initial benchmark. The Court has
4 noted that. The guidelines are not the only consideration,
5 however. Accordingly, after giving both parties an
6 opportunity to argue for whatever sentence they deem
7 appropriate, the district judge should then consider all of
8 the 3553(a) factors to determine whether they support the
9 sentence requested by either party. In doing so, the Court
10 may not presume that the guideline range is reasonable. The
11 Court must make an individualized assessment based upon the
12 facts presented. If the Court decides that an outside
13 guideline sentence is warranted, the Court must then
14 consider the extent of the deviation and ensure that the
15 justification is sufficiently compelling to support the
16 degree of the variance.

17 In establishing an appropriate sentence in this
18 matter, the Court has taken into consideration the totality
19 of the nature of the circumstances of the instant offense,
20 as well as the characteristics and the criminal history of
21 the defendant, to include his prior criminal history. And
22 the Court has considered the combination of these 3553(a)
23 factors as well as the advisory nature of the applicable
24 guidelines.

25 The nature and circumstances of these offenses are

1 very serious. Despite having been convicted of sexually
2 abusing two minor boys and being imprisoned for those
3 offenses, less than six years later, after the defendant's
4 release, the defendant repetitively victimized his wife's
5 four-year-old granddaughter, which is the basis for the
6 instant offenses in this matter. The defendant did so by
7 digitally penetrating her vagina, sodomizing her, and having
8 the four-year-old touch his penis, all for his own sexual
9 gratification. The victim viewed the defendant as a
10 grandfather figure. Nevertheless, the defendant violated
11 the victim's trust and the victim's body and abused her over
12 a multiday period. Defendant threatened the victim by
13 telling her that if she disclosed the abuse to her
14 grandmother, her grandmother would be mad at her and that
15 she would go -- and that he would go to jail.

16 The defendant has imparted unimaginable pain and
17 suffering on the victim. Her family testified at the trial,
18 after the incident, she went from a happy, loving child to a
19 destructive, angry, and defiant child. Over the years, the
20 victim has suffered from intense nightmares and self-harm.
21 The victim has had to seek counseling and cope with the
22 trauma of the event. When she testified in this court 24
23 years later, as an adult, the pain, hurt, and trauma was
24 still very apparent to this Court.

25 The Court has specifically considered the defendant's

1 history and characteristics. The defendant exhibits a
2 pattern of perpetrating sexual abuse against minor children.
3 In his first convictions for sexual offenses, the defendant
4 sexually abused two small boys, ages five and eight, on two
5 separate occasions. The defendant bribed each of the boys
6 to allow him to sexually abuse them by paying them money.
7 He served approximately two years of his five-year sentence
8 of imprisonment imposed in that matter. The defendant has
9 demonstrated a repetitive sexual predation of young
10 children. His criminal sexual acts progressed from one-time
11 events with young boys, who were residents of an apartment
12 complex where he was employed in maintenance, to repeatedly
13 abusing his wife's young granddaughter who was temporarily
14 staying in the defendant's home and who was under his care.
15 The Court finds by a preponderance of the evidence that the
16 defendant is a child sexual predator with a high risk of
17 recidivism.

18 Further, as demonstrated by the presentence report and
19 the extensive information defendant requested to be included
20 in the report, defendant has a substantial concern for
21 himself and does not indicate any sense of remorse for his
22 actions or concern for any of his victims whatsoever.

23 In fashioning a sentence, the Court is to avoid
24 unwarranted sentence disparities among similarly situated
25 defendants. Section 3553(a)(6) requires a district court to

1 consider disparities nationwide among defendants with
2 similar records and guideline calculations. However,
3 disparate sentences are allowed where the disparity is
4 explicable by the facts on the record. Here, the
5 defendant's guideline range does not reflect the severity of
6 the conduct or defendant's status as a repeat offender.
7 Since defendant's offense occurred in 1996, the sentencing
8 guidelines have been revised since that time. Under the
9 current guidelines, defendant would receive a five-level
10 enhancement pursuant to U.S. Sentencing Guideline
11 4B1.5(b)(2) as a repeat and dangerous sex offender against
12 minor children, rendering his base offense level 41 with a
13 guideline range of imprisonment from 360 months to life.
14 Defendant is, in fact, a repeat, dangerous sex offender
15 against minor children. The Court notes that after an
16 Oklahoma jury heard the facts and circumstances of this
17 case, it was compelled to render a verdict against the
18 defendant, which included two 500-year terms of imprisonment
19 and a term of life without parole.

20 The Court is mindful of the U.S. Supreme Court's
21 decision which held that the State did not have
22 jurisdiction. Accordingly, the underlying jury verdict does
23 not bind this Court, and this Court is not looking to that
24 jury verdict to determine an appropriate sentence in this
25 case. With that said, the jury's verdict is indicative of

1 the severity of the defendant's conduct and does shed some
2 light on the sentence disparity issue, at least as far as an
3 oklahoma jury is concerned.

4 Finally, the Court has considered the types of
5 sentences available. Based upon the characteristics of the
6 instant offenses and the defendant's history and
7 characteristics, the Court is convinced that there is not a
8 sentence within the guideline range that can be fashioned to
9 protect the public from this defendant.

10 While the sentencing guidelines provide for an
11 advisory guideline range of imprisonment of 210 to 262
12 months, the federal statutes provide for imprisonment of any
13 term of years up to life.

14 For the reasons articulated and to reflect the
15 seriousness of this offense, promote respect for the law,
16 provide just punishment for the offense, and protect the public
17 from further crimes by this defendant by ensuring that no
18 child is victimized for the sexual gratification of this
19 defendant, the Court finds that an upward variance is
20 warranted in this case. A sentence greater than the
21 imprisonment range identified by the advisory guideline
22 calculations is reasonable and sufficient, but not greater
23 than necessary, to comply with the sentencing objectives set
24 forth in Title 18, U.S.C., Section 3553(a). An upward
25 variance in this matter will adequately reflect the

1 seriousness of the offense, provide just punishment, afford
2 deterrence to further criminal conduct, and protect the
3 public from further crimes by this defendant. Therefore,
4 the government's motion is granted in part.

5 The Court further notes that the defendant is a
6 three-time convicted child abuser, and the Court must pose
7 the question: At what point does the Court stand between
8 this defendant and any other child who might come in contact
9 with him were he to be released to the public? At what
10 point, if not now. This Court, in good conscience, cannot
11 subject another child to the defendant's predatory ways.

12 Will the defendant and his counsel please approach?

13 Mr. McGirt, do you wish to make a statement, sir?

14 THE DEFENDANT: Yes.

15 MR. O'CARRROLL: May I have a moment?

16 THE COURT: Yes, you certainly may.

17 THE DEFENDANT: Your Honor --

18 THE COURT: Mr. McGirt?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You're welcome to take your mask down
21 if you would like, sir, but you certainly are welcome to
22 keep it up if you would like as well.

23 MR. O'CARRROLL: One moment, please, Judge.

24 THE COURT: You may proceed, sir.

25 THE DEFENDANT: First of all, I'd like to give

1 honor to the most high and give honor to this honorable
2 Court and to my family and those that have believed in my
3 innocence and those that have supported me.

4 And I had a two-page allocution prepared, and our
5 printer -- they had to buy a new printer at the prison, and
6 they couldn't get it to work, and they were supposed to fax
7 it to you. But I, too -- I mean, I -- I -- I realize, you
8 know -- if I was guilty -- if I was guilty, all the things
9 that I've heard in this courtroom, I'd hate that man myself.
10 I would. But as I've said time and time again, I mean, I've
11 not been able to tell the other side of the story. I've
12 tried to the best I could, but I -- back in -- I know how to
13 plead guilty when I'm guilty.

14 Back in 1989, I waived my preliminary hearing, I
15 entered a blind plea and plead guilty to abusing those two
16 boys. I did. And I want on ahead and let that be my
17 lesson. But like we've said in some of our pleadings, the
18 -- the -- what happened to me at ten years old left some
19 scars with me, and I suppressed them as -- in the Marine
20 Corps, especially in prison. And when I went in 1965, I
21 suppressed -- I had the homosexual tendencies. I mean --
22 and I suppressed them, I suppressed them, I suppressed them,
23 until 1988 when it came out, and I came face to face with
24 that dark side.

25 And like I say, I had all this stuff written down, and

1 I was -- I was beaten pretty bad back in 2003, and I had to
2 take -- they choked me unconscious with a towel after they
3 broke my collarbone, knocked me -- knocked me out. When I
4 came to, they stomped all over me and everything and broken
5 my collar -- all this stuff is in the record. It's -- it's
6 medical. And -- and so I have problems with -- I took -- I
7 took medication for a number of -- from 2004 until 2009, and
8 that caused a lot of the constant confusion and loss of
9 recall and -- and -- and some other things, and that's why I
10 have problems with my memory, and that's documented too.
11 And I've been talking to the psych services over at -- and
12 like I -- and she said that -- the clinician says that the
13 -- the medication that I took was -- it changes the chemical
14 balance in our brains, and that's how it was able to get
15 over the PTSD, and she said that they -- that it did that to
16 some people, and it might be permanent, so -- but, anyway,
17 having said all that, I -- I know how to -- I know how to
18 plead guilty whenever I'm guilty about something. And I --
19 I -- and what I've observed here in the courtroom, I mean,
20 the accuser and her family and stuff, I mean, I don't hold
21 anything against them.

22 And there was one question that that's always, always,
23 always troubled me, and that's how five people could be in a
24 house -- in a house at the same time -- not all five, but, I
25 mean -- and all that stuff is in some of the writings that I

1 put in, like, in my objection, objection to the report, and
2 -- and it's -- it's written down, but I -- I can't remember
3 some things. My -- I mean, some things I can, and it takes
4 me days and days. And like I say, I stayed up -- they let
5 me stay up last night until -- until about two o'clock this
6 morning typing that page, after I read the allocusal [sic]
7 with -- with Mr. O'Carroll. After I read that, then I went
8 on ahead and went through, and I did a two-pager myself.
9 And my unit manager was going to try to get it printed and
10 fax it to your -- I mean, email it to you, but I don't know.
11 I guess it didn't happen. But, anyway, I can't say
12 everything I had written down because it took me over half
13 the night to write it, but I accept -- I -- I know that I
14 was wrong in what I did to those boys.

15 And if I -- and by listening to all the testimony and
16 watching the demeanor of the accuser and her family, I mean,
17 if I had really done that, if I had really done, I'd hate
18 myself, but -- and there are things that really weren't
19 brought out in trial. And I won't rehash the trial or
20 anything, but just like some of the misinformation that's
21 been in some of the reports or motions, like, where it said
22 that one thing was that -- that she'd sweated and her -- she
23 was wet, and her hair was wet, and they had to move her from
24 bedroom to bedroom. All that stuff was going on before,
25 before the accusation. It's in the transcript. And another

1 thing that's in the transcripts, where she said that her --
2 her aunt had told her what to say, practiced with her, and
3 made that tape, it's in the transcripts, trial, preliminary
4 hearing. It's in the transcripts. And the doctor didn't
5 find no kind of -- no kind of scars, no tears, nothing. I
6 mean, all that, I can't understand.

7 But like I say, if I was guilty, I know how to plead
8 guilty. I waived my preliminary hearing. I went on ahead
9 and -- and I was offered a five-year plea bargain to plead
10 guilty to this. Norma was with me. I was offered five
11 years, plea bargain, because they didn't have a case. And I
12 was offered -- before trial, the other -- the other DA went
13 on ahead and offered me 20. He said, you know -- and I told
14 them, I can't plead guilty to something I didn't do. I know
15 how to plead guilty. I had to write out a statement. I
16 wrote it out. And -- and -- and -- and like I keep saying,
17 five people were in that house. Me and her uncle was out
18 there in the driveway detailing cars for those two days, and
19 I think I know what -- and then the -- for the other three
20 days, there were -- well, it's all written out. It's all
21 written out.

22 And so that's -- I'd just like to -- so, once again,
23 like I said, I wanted to go ahead and thank the most high
24 for this opportunity and thank this honorable Court and
25 thank my family for their support, and those that -- once

1 the truth actually comes out, I mean, it will, but ...

2 THE COURT: Thank you for your statement,
3 Mr. McGirt.

4 Mr. O'Carroll, do you have anything else to add on
5 behalf of your client, sir?

6 MR. O'CARROLL: One moment, Judge.

7 THE COURT: Yes.

8 MR. O'CARROLL: Judge, he told me earlier -- may I?

9 THE COURT: Yes, you may. Yes.

10 MR. O'CARROLL: If I could make some statements,
11 and he'll correct me. He told me earlier that one of the
12 things he wanted to say was that, you know, and -- he
13 remembers the first trial well, and he remembers Ms. Coker's
14 mother nodding her head in the front row. But he also told
15 me that he didn't doubt Ms. Coker's sincerity and didn't
16 begrudge Ms. Coker, that he understood the dynamic in play.

17 Is that correct, Mr. McGirt?

18 THE DEFENDANT: (Nods head.)

19 THE COURT: Have you remembered anything else that
20 you want to say to the Court?

21 THE DEFENDANT: (Shakes head.)

22 MR. O'CARROLL: Thank you, Judge.

23 THE COURT: All right. Thank you very much. All
24 right. You both can remain right there.

25 MR. O'CARROLL: Here?

1 THE COURT: Yes. Thank you very much.

2 Ms. McAmis, does the government wish to make a final
3 statement?

4 MS. MCAMIS: No, Your Honor.

5 THE COURT: Mr. McGirt, you appear before the
6 Court today for the purposes of sentencing, having
7 previously been convicted of Count One of the superseding
8 indictment charging you with aggravated sexual abuse in
9 Indian Country in violation of Title 18, U.S.C., Sections
10 1151, 1153, 2241(c) and 2246(2)(C); Count Two of the
11 superseding indictment charging you with aggravated sexual
12 abuse in Indian Country in violation of Title 18, U.S.C.,
13 Sections 1151, 1153, 2241(c), and 2246(2)(B), and Count
14 Three of the superseding indictment charging you with
15 abusive sexual contact in Indian Country in violation of
16 Title 18, U.S.C., sections 1151, 1153, 2241(c), 2244(a)(5),
17 and 2246(3).

18 In accordance with applicable law, it is the order and
19 judgment of this Court that you, Jimcy McGirt, are hereby
20 committed to the custody of the Bureau of Prisons to be
21 imprisoned for a term of life as to Count One, life as to
22 Count Two, and life as to Count Three, all to run
23 concurrently.

24 In the event that you are released from imprisonment,
25 you shall be placed on a term of supervised release for a

1 period of five years as to Counts One, Two, and Three.
2 Should the term of supervised release be revoked, an
3 additional term of imprisonment of five years could be
4 imposed at each revocation.

5 Immediately upon release from confinement, but in no
6 event later than 72 hours, you must report in person to the
7 probation office in the district where you are authorized to
8 reside.

9 In the event you are placed on supervised release,
10 while on supervised release, you must not commit another
11 federal, state, or local crime. You must not own, possess,
12 or have access to a firearm, ammunition, destructive device,
13 or other dangerous weapon. You must, at the direction of
14 the United States Probation Office, cooperate with and
15 submit to the collection of a DNA sample for the submission
16 to the combined DNA Index System. Further, you must not
17 possess a controlled substance, and you must refrain from
18 any unlawful use of a controlled substance.

19 You must submit to one drug test within 15 days of
20 your release from custody and subsequent to the first test,
21 you shall submit to at least two additional periodic drug
22 tests. Subsequent to the first test, you shall submit to at
23 least two additional periodic drug tests thereafter and not
24 to exceed eight drug tests per month.

25 Based upon the nature of the -- you shall also comply

1 with the standard conditions that have been adopted by this
2 Court and/or as set out in the judgment, which are imposed
3 because they establish the basic expectation for your
4 behavior while on supervised release and identify the
5 minimum tools needed by the probation office to keep
6 informed, report to the Court, and bring about improvement
7 in your conduct and condition. Based upon the nature of the
8 offenses and your history and characteristic of sexually
9 abusing minor children, you are also to comply with the
10 following additional special conditions of supervised
11 release: You shall register pursuant to the provisions of
12 the Sex Offender Registration and Notification Act or any
13 applicable state registration law.

14 You shall attend and participate in a mental health
15 treatment program and/or a sex offender treatment program as
16 approved and directed by the probation office. You shall
17 abide by all program rules, requirements, and conditions of
18 the sex offender treatment program, including submission to
19 polygraph testing to determine if you are in compliance with
20 these conditions of release. You may be required to
21 contribute to the cost of the services rendered in an amount
22 to be determined by the probation office, based upon your
23 ability to pay. Any refusal to submit to assessment or
24 tests as scheduled is a violation of the conditions of
25 supervision.

1 You shall not be at any residence where any children
2 under the age of 18 reside without the prior permission of
3 the United States Probation Office.

4 You shall not be associated with children under the
5 age of 18 except in the presence of a responsible adult who
6 is aware of your background and your current offenses, and
7 who has been approved by the United States Probation Office.

8 You shall submit to a search and seizure -- search
9 conducted by the United States Probation Office for your
10 person, residence, vehicle, office, and/or business at
11 reasonable times and in reasonable manners, based upon
12 reasonable suspicion of contraband or evidence of a
13 violation of conditions of supervised release. Failure to
14 submit to such a search may be grounds for revocation.

15 Mr. McGirt, based upon your financial profile as
16 outlined in the presentence report, the Court finds that you
17 do not have the ability to pay a fine, and, therefore, no
18 fine will be imposed.

19 It is further ordered, however, that you shall pay a
20 \$100 special monetary assessment per count for a total of
21 \$300. This assessment is to be paid immediately to the
22 United States Court Clerk for the Eastern District of
23 Oklahoma.

24 The Court recognizes that the United States Sentencing
25 Guidelines are advisory and not mandatory, but has

1 considered the sentencing guidelines along with all the
2 factors set forth Title 18, U.S.C., Sections 3553(a) to
3 reach an appropriate and reasonable sentence in this case.
4 In determining a sentence, the Court has considered the
5 nature and circumstances of the offense, defendant's
6 personal characteristics and defendant's criminal history,
7 sentencing disparities and the types of sentences available.
8 The Court has further taken into consideration the
9 sentencing guideline calculations contained within the
10 presentence report. This case involved the defendant, a
11 repeat sexual predator, who was 47 years old at the time of
12 the offenses, sexually abusing his wife's four-year-old
13 granddaughter. Defendant did so while the child was in his
14 care while her grandmother was at work. The minor victim
15 considered the defendant to be a grandfather-like figure.
16 The defendant threatened the minor victim to not tell anyone
17 about the abuse. As outlined above, the defendant -- as
18 outlined above, the Court finds the defendant to be a
19 dangerous individual with a high risk of recidivism.
20 Defendant victimized the minor victim in this case shortly
21 after being released from incarceration for sexually abusing
22 two other young boys, ages five and eight. The defendant
23 has not demonstrated any sense of remorse or concern for any
24 of his victims whatsoever, and the victim has suffered
25 significantly because of the defendant's crimes.

1 The sentence prescribed by this Court, which is
2 outside the advisory guideline range, reflects the
3 seriousness of the offenses, will serve as an adequate
4 deterrent to this defendant, promote respect for the law and
5 provide just punishment for the offenses and is based on
6 justifiable reasons. This sentence affords adequate
7 deterrence to criminal conduct and protects the public from
8 further crimes by this defendant. The Court has further
9 determined that this sentence is reasonable and sufficient,
10 but not greater than necessary, to meet the requirements and
11 objectives set forth in Title 18, U.S.C., Sections 3553(a).
12 Sentencing disparities among defendants were considered in
13 determining an appropriate sentence in this case.

14 To the extent defendant is ever released, the term of
15 supervised release is appropriate with special conditions
16 based upon the aforementioned factors and will allow this
17 defendant to be monitored for future violations and receive
18 appropriate mental health and substance abuse treatment.
19 Restitution, as noted, is mandatory but has been
20 unascertainable in this case.

21 The Court notes for the record that based upon all
22 presently known facts and legal principles, this is the same
23 sentence the Court would impose if given the broadest
24 possible discretion, and the same sentence the Court would
25 impose notwithstanding any judicial findings of fact by

1 adoption of the presentence report or at this hearing.

2 Mr. McGirt, I have the duty to advise you, sir, that
3 you have a right to appeal the sentence that has been
4 imposed. Any such appeal must be filed within 14 days of
5 the Court's judgment. Mr. O'Carroll will remain your
6 counsel during this 14-day time of appeal. If you wish to
7 appeal and cannot afford an appeal, there are forms that can
8 be completed by you in the court clerk's office whereby you
9 may institute an appeal without prepayment of costs.

10 Mr. O'Carroll, is there anything further at this time
11 on behalf of Mr. McGirt?

12 MR. O'CARROLL: Yes, Your Honor. I believe you
13 did not hear him say -- express remorse for the boys in
14 Oklahoma City when you were reading from your decision. He
15 did say it this day.

16 THE COURT: I heard for the first time some --
17 some expression of remorse, but I think it was very
18 marginal.

19 MR. O'CARROLL: Yes, Your Honor.

20 THE COURT: Okay. Anything further?

21 MR. O'CARROLL: No, Your Honor.

22 THE COURT: Ms. McAmis, anything further on behalf
23 of the government?

24 MS. MCAMIS: No, Your Honor.

25 THE COURT: The defendant is remanded to the

1 custody of the United States Marshal Service.

2 Court is adjourned.

3 (PROCEEDINGS CONCLUDED.)

4

5 REPORTER'S CERTIFICATE

6 I, Joanna Smith, Registered Professional Reporter
7 and Certified Shorthand Reporter, in and for the State of
8 Oklahoma, do hereby certify that the foregoing is a correct
9 transcript from the official proceedings in the
10 above-entitled matter.

11

12 CERTIFIED: s/Joanna Smith
13 Joanna Smith, CSR-RPR
14 United States Court Reporter
101 North 5th Street
Muskogee, Oklahoma 74401

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